

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Banking & Securities
233 Richmond Street
Providence, Rhode Island 02903

CONCISE EXPLANATORY STATEMENT

Banking Regulation 3– Home Loan Protection Act

The Department of Business Regulation (“Department”) hereby adopts Banking Regulation 3 effective May 1, 2007 and makes this statement in accordance with R.I. Gen. Laws § 42-35-2.3. The purpose of this regulation is to set forth procedures, interpretations, and clarifications in order to: (a) provide guidelines and requirements to Regulated Institutions as defined in R.I. Gen. Laws § 19-1-1 (unless otherwise exempt) and Lenders and Loan Brokers as defined in R.I. Gen. Laws § 19-14-1; and; (b) to ensure compliance with and the promotion of the purposes of the provisions of R.I. Gen. Laws § 34-25.2-1 *et seq.* entitled *Rhode Island Home Loan Protection Act* (hereinafter referred to as “the Act”). There are numerous differences between the text of the proposed regulation as published in accordance with R.I. Gen. Laws § 42-35-3 and the regulation as adopted. There were editing changes made to improve content for readability, capitalization of all defined terms, outlining changes, formatting changes, and other self-explanatory amendments. The material, substantive changes are set forth with references to respective Sections of the adopted Banking Regulation 3 as follows:

Section 4E: The definition of Bona Fide and Reasonable fees was modified to address comments regarding the record-keeping limitations based on service agreements with specific vendors which make it difficult to obtain an invoice for each specific transaction. The requirement for “an invoice or substantially similar document” was stricken as it pertains to each specific fee. However, in Section 5 A (viii) the Department specifically added a provision to address such issues as follows:

All Persons subject to the Act shall maintain evidence that includes a verifiable invoice or substantially similar document for Bona Fide and Reasonable Fees. Substantially similar documents may include, without limitation, a master service agreement with the service provider that is applicable to all loans. Such documents relating to Bona Fide and Reasonable Fees need not be maintained in each individual loan file.

Section 4G: The definition of Composite Rate was added to address numerous comments which raised objections to the Department’s proposed definition of Fully Indexed Rate which previously required the use of the maximum contract interest rate in several different contexts in the proposed regulation. The Department also incorporated the Composite Rate: (i) into the definition of Previous Note Rate (Section 4U); (ii) in the

calculation of the new monthly payment in determining tangible net benefit (Section 5B(ii)(a)(1)); and in calculating the rate threshold (Section 5D(i)(a)).

Section 4H: The term Consummation was defined to provide a definition for the term used in the Home Loan Protection Act, R.I. Gen. Laws § 34-25.2-1 *et seq.*, and to respond to comments requesting that this term be defined in order to clarify the flipping provisions of the Home Loan Protection Act, R.I. Gen. Laws § 34-25.2-1 *et seq.*

Section 4K: The term Excluded Points and Fees was moved from prior Section 4Q (ix) which was delineated under the caption “Points and fees shall not include.”

Section 4M: The term Fully Indexed Rate was modified and incorporated into the definition of Composite Rate in order to address comments regarding objections to the use of the maximum contract rate in the prior definition of Fully Indexed Rate.

Section 4Q: The term New Note Rate was defined in order to clarify the prohibitions in Section 5C(v).

Section 4S(ii): The previous language which stated “[a]ny such fees shall be supported by a verifiable invoice or substantially equivalent document from the service provider and shall not exceed the amount stated on said invoice” was stricken from the proposed regulation. See explanation regarding Section 4E above.

Section 4U: The term Previous Note Rate was specifically defined in conjunction with the definitions of Previous Loan, and New Note Rate. In the proposed regulation, the term “Current Note Rate” was defined in terms of the rate on the previous loan and could cause confusion. The term “Current Note Rate” was stricken from the adopted regulation but was substantively replaced with the defined term Previous Note Rate. Further, the term was specifically defined in order to clarify Section 5B(ii)(a)(4).

Section 5A(iv): The timing for providing Disclosure Forms HLP 1 and 2 to applicants was changed to three (3) business days in order to provide consistency with other federally required disclosures.

Section 5A(v): The timing for providing Disclosure Form HLP 3 was changed to prior to Consummation to respond to: (i) comments objecting to issues regarding the length of time that would have required between disclosure and closing; (ii) comments regarding potential harm to consumers facing time constraints and/or delays; and, (iii) competitive disadvantage to state regulated entities.

Section 5A(vi): The timing for providing Disclosure Form HLP 4 was changed to respond to: (i) comments objecting to issues regarding the length of time that would have required between disclosure and closing; (ii) comments regarding potential harm to consumers facing time constraints and/or delays; and, (iii) competitive disadvantage to state regulated entities.

Section 5A(viii): See explanation regarding Section 4E above.

Section 5A(ix): An allowance for maintaining records via optical imaging was added in response to comments regarding such business practices.

Section 5A(x): This provision was added in order to clarify and reference the record-keeping requirement which is currently in Banking Regulation 98-14.

Section 5D(iii): The ten (10) day waiting period was stricken due to comments regarding unregulated entities having a competitive advantage over state regulated entities who did not have such a requirement.

Section 7: The Department will not take regulatory action with respect to the use of disclosures in order to allow any Person subject to the Act or Regulation 3 sufficient time to review and adopt the revised disclosures in adopted Regulation 3.

Forms 1,2,3,4 HLP in Appendix 5 of adopted Regulation 3: These disclosures were amended to require the “Creditor” to sign, as applicable, in varying contexts. The term “Creditor” was specifically substituted for Lender and Loan Broker to respond to comments regarding the difficulty in having both the Lender and Loan Broker sign all disclosures due to varying business models for originating, processing, and closing loans. The disclosures, as amended, allow the Creditor (which is defined in the Home Loan Protection Act as Lender and Loan Broker) to sign the disclosure based on the Lender’s or Loan Broker’s respective contact with the applicant or borrower during the transaction.

Form 3 HLP in Appendix 5 of adopted Regulation 3 Entitled “Rhode Island Home Loan Protection Act Disclosure Tangible Net Benefit:” The Disclosure was modified to add specifically defined terms, to make the form more user-friendly, and to provide more space for explanatory statements to substantiate the basis for the tangible net benefit. Additionally, the language to which the borrower and Creditor are assenting was modified to stress the Creditor’s duty to verify and explain the basis for the refinancing within the sixty (60) month period consistent with the purpose of the Home Loan Protection Act and with the borrower’s need to understand that rationale prior to refinancing. The language was specifically amended to after considering comments regarding the inference that the prior disclosure was requiring the borrower to “acknowledge and certify” acts to be performed by the Creditor. Additionally, the language as adopted furthers the statutory purpose of confirming that the Creditor has undertaken its duty to perform the statutorily required analysis and that the Creditor has explained the basis for refinancing to the borrower. The borrower is only confirming that the Creditor has explained the analysis.

Form 4 HLP in Appendix 5 of adopted Regulation 3 Entitled “Rhode Island Home Loan Protection Act Disclosure High Cost Home Loan:” This disclosure was amended to require only the Creditor (as

discussed above) and those actually receiving High Cost Home Loans to receive and sign the disclosure. Additionally, this disclosure was amended to provide those receiving High Cost Home Loans to be provided information regarding the Fully Indexed Rate, the maximum interest rate under the terms of the Home Loan, and the maximum amount of the payment under the terms of the High Cost Home Loan applying the maximum interest rate.

A. Michael Marques,
Director

Date Filed: April 11, 2007